

105TH CONGRESS
2D SESSION

H. R. 3213

IN THE SENATE OF THE UNITED STATES

MARCH 25, 1998

Received; read twice and referred to the Committee on Veterans' Affairs

AN ACT

To amend title 38, United States Code, to clarify enforcement of veterans' employment and reemployment rights with respect to a State as an employer or a private employer, to extend veterans' employment and reemployment rights to members of the uniformed services employed abroad by United States companies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “USERRA Amend-
5 ments Act of 1998”.

6 **SEC. 2. ENFORCEMENT OF RIGHTS WITH RESPECT TO A**
7 **STATE AS AN EMPLOYER.**

8 (a) IN GENERAL.—Section 4323 of title 38, United
9 States Code, is amended to read as follows:

10 **“§ 4323. Enforcement of rights with respect to a State**
11 **or private employer**

12 “(a) ACTION FOR RELIEF.—(1) A person who re-
13 ceives from the Secretary a notification pursuant to sec-
14 tion 4322(e) of this title of an unsuccessful effort to re-
15 solve a complaint relating to a State (as an employer) or
16 a private employer may request that the Secretary refer
17 the complaint to the Attorney General. If the Attorney
18 General is reasonably satisfied that the person on whose
19 behalf the complaint is referred is entitled to the rights
20 or benefits sought, the Attorney General may appear on
21 behalf of, and act as attorney for, the person on whose
22 behalf the complaint is submitted and commence an action
23 for relief under this chapter for such person. In the case
24 of such an action against a State (as an employer), the

1 action shall be brought in the name of the United States
2 as the plaintiff in the action.

3 “(2) A person may commence an action for relief with
4 respect to a complaint against a State (as an employer)
5 or a private employer if the person—

6 “(A) has chosen not to apply to the Secretary
7 for assistance under section 4322(a) of this title;

8 “(B) has chosen not to request that the Sec-
9 retary refer the complaint to the Attorney General
10 under paragraph (1); or

11 “(C) has been refused representation by the At-
12 torney General with respect to the complaint under
13 such paragraph.

14 “(b) JURISDICTION.—(1) In the case of an action
15 against a State (as an employer) or a private employer
16 commenced by the United States, the district courts of
17 the United States shall have jurisdiction over the action.

18 “(2) In the case of an action against a State (as an
19 employer) by a person, the action may be brought in a
20 State court of competent jurisdiction in accordance with
21 the laws of the State.

22 “(3) In the case of an action against a private em-
23 ployer by a person, the district courts of the United States
24 shall have jurisdiction of the action.

1 “(c) VENUE.—(1) In the case of an action by the
2 United States against a State (as an employer), the action
3 may proceed in the United States district court for any
4 district in which the State exercises any authority or car-
5 ries out any function.

6 “(2) In the case of an action against a private em-
7 ployer, the action may proceed in the United States dis-
8 trict court for any district in which the private employer
9 of the person maintains a place of business.

10 “(d) REMEDIES.—(1) In any action under this sec-
11 tion, the court may award relief as follows:

12 “(A) The court may require the employer to
13 comply with the provisions of this chapter.

14 “(B) The court may require the employer to
15 compensate the person for any loss of wages or ben-
16 efits suffered by reason of such employer’s failure to
17 comply with the provisions of this chapter.

18 “(C) The court may require the employer to
19 pay the person an amount equal to the amount re-
20 ferred to in subparagraph (B) as liquidated dam-
21 ages, if the court determines that the employer’s
22 failure to comply with the provisions of this chapter
23 was willful.

24 “(2)(A) Any compensation awarded under subpara-
25 graph (B) or (C) of paragraph (1) shall be in addition

1 to, and shall not diminish, any of the other rights and
2 benefits provided for under this chapter.

3 “(B) In the case of an action commenced in the name
4 of the United States for which the relief includes com-
5 pensation awarded under subparagraph (B) or (C) of
6 paragraph (1), such compensation shall be held in a spe-
7 cial deposit account and shall be paid, on order of the At-
8 torney General, directly to the person. If the compensation
9 is not paid to the person because of inability to do so with-
10 in a period of three years, the compensation shall be cov-
11 ered into the Treasury of the United States as miscellane-
12 ous receipts.

13 “(3) A State shall be subject to the same remedies,
14 including prejudgment interest, as may be imposed upon
15 any private employer under this section.

16 “(e) EQUITY POWERS.—The court may use its full
17 equity powers, including temporary or permanent injunc-
18 tions, temporary restraining orders, and contempt orders,
19 to vindicate fully the rights or benefits of persons under
20 this chapter.

21 “(f) STANDING.—An action under this chapter may
22 be initiated only by a person claiming rights or benefits
23 under this chapter under subsection (a) or by the United
24 States under subsection (a)(1).

1 “(g) RESPONDENT.—In any action under this chap-
2 ter, only an employer or a potential employer, as the case
3 may be, shall be a necessary party respondent.

4 “(h) FEES, COURT COSTS.—(1) No fees or court
5 costs may be charged or taxed against any person claiming
6 rights under this chapter.

7 “(2) In any action or proceeding to enforce a provi-
8 sion of this chapter by a person under subsection (a)(2)
9 who obtained private counsel for such action or proceed-
10 ing, the court may award any such person who prevails
11 in such action or proceeding reasonable attorney fees, ex-
12 pert witness fees, and other litigation expenses.

13 “(i) INAPPLICABILITY OF STATE STATUTE OF LIMI-
14 TATIONS.—No State statute of limitations shall apply to
15 any proceeding under this chapter.

16 “(j) DEFINITION.—In this section, the term ‘private
17 employer’ includes a political subdivision of a State.”.

18 (b) EFFECTIVE DATE.—(1) Section 4323 of title 38,
19 United States Code, as amended by subsection (a), shall
20 apply to actions commenced under chapter 43 of such title
21 on or after the date of the enactment of this Act, and
22 shall apply to actions commenced under such chapter be-
23 fore the date of the enactment of this Act that are not
24 final on the date of the enactment of this Act, without
25 regard to when the cause of action accrued.

1 (2) In the case of any such action against a State
2 (as an employer) in which a person, on the day before the
3 date of the enactment of this Act, is represented by the
4 Attorney General under section 4323(a)(1) of such title
5 as in effect on such day, the court shall upon motion of
6 the Attorney General, substitute the United States as the
7 plaintiff in the action pursuant to such section as amended
8 by subsection (a).

9 **SEC. 3. PROTECTION OF EXTRATERRITORIAL EMPLOY-**
10 **MENT AND REEMPLOYMENT RIGHTS OF MEM-**
11 **BERS OF THE UNIFORMED SERVICES.**

12 (a) DEFINITION OF EMPLOYEE.—Section 4303(3) of
13 title 38, United States Code, is amended by adding at the
14 end the following: “Such term includes any person who
15 is a citizen, national, or permanent resident alien of the
16 United States employed in a workplace in a foreign coun-
17 try by an employer that is an entity incorporated or other-
18 wise organized in the United States or that is controlled
19 by an entity organized in the United States, within the
20 meaning of section 4319(c) of this title.”.

21 (b) FOREIGN COUNTRIES.—Subchapter II of chapter
22 43 of such title is amended by inserting after section 4318
23 the following new section:

1 **“§ 4319. Employment and reemployment rights in for-**
2 **eign countries**

3 “(a) LIABILITY OF CONTROLLING UNITED STATES
4 EMPLOYER OF FOREIGN ENTITY.—If an employer con-
5 trols an entity that is incorporated or otherwise organized
6 in a foreign country, any denial of employment, reemploy-
7 ment, or benefit by such entity shall be presumed to be
8 by such employer.

9 “(b) INAPPLICABILITY TO FOREIGN EMPLOYER.—
10 This subchapter does not apply to foreign operations of
11 an employer that is a foreign person not controlled by an
12 United States employer.

13 “(c) DETERMINATION OF CONTROLLING EM-
14 PLOYER.—For the purpose of this section, the determina-
15 tion of whether an employer controls an entity shall be
16 based upon the interrelations of operations, common man-
17 agement, centralized control of labor relations, and com-
18 mon ownership or financial control of the employer and
19 the entity.

20 “(d) EXEMPTION.—Notwithstanding any other provi-
21 sion of this subchapter, an employer, or an entity con-
22 trolled by an employer, may—

23 “(1) discriminate within the meaning of section
24 4311 of this title;

1 “(2) deny reemployment rights within the
2 meaning of section 4312, 4313, 4314, or 4315 of
3 this title; or

4 “(3) deny benefits within the meaning of sec-
5 tion 4316, 4317, or 4318 of this title,
6 with respect to an employee in a workplace in a foreign
7 country, if compliance with any such section would cause
8 such employer, or such entity controlled by an employer,
9 to violate the law of the foreign country in which the work-
10 place is located.”.

11 (c) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of chapter 43 of such title is amended
13 by inserting after the item relating to section 4318 the
14 following new item:

“4319. Employment and reemployment rights in foreign countries.”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply only with respect to conduct occur-
17 ring after the date of the enactment of this Act.

18 **SEC. 4. COMPLAINTS RELATING TO REEMPLOYMENT OF**
19 **MEMBERS OF THE UNIFORMED SERVICES IN**
20 **FEDERAL SERVICE.**

21 (a) IN GENERAL.—The first sentence of paragraph
22 (1) of section 4324(c) of title 38, United States Code, is
23 amended by inserting before the period at the end the fol-
24 lowing: “, without regard as to whether the complaint ac-
25 crued before, on, or after October 13, 1994”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to all complaints filed with the
3 Merit Systems Protection Board on or after October 13,
4 1994.

Passed the House of Representatives March 24,
1998.

Attest:

ROBIN H. CARLE,
Clerk.